

Order 98-10-21
Served Oct. 20, 1998



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 20th day of October, 1998

In the matter of

**1999 U.S.-FRANCE COMBINATION
SERVICE FREQUENCY
ALLOCATION PROCEEDING**

Docket OST 4614

Application of

**AMERICAN AIRLINES, INC.
DELTA AIR LINES, INC.
UNITED AIRLINES, INC.
US AIRWAYS, INC.**

**Docket OST-98-3756
OST-98-3932
OST-98-3933
OST-98-3931**

for allocation of frequencies (U.S.-France)

In the matter of

**U.S.-FRANCE COMBINATION
SERVICE FREQUENCY
ALLOCATION**

Docket OST 98-3872

Application of

TOWER AIR, INC.

Docket OST 98-3757

for allocation of U.S.-France frequencies

ORDER ON RECONSIDERATION AND TO SHOW CAUSE

SUMMARY

By this order, we (1) grant the petitions of American Airlines, Inc. and US Airways for reconsideration of Order 98-6-29 and, on review, affirm the allocation of 14 weekly U.S.-France base-level frequencies to Trans World Airlines, Inc. and 8 weekly base-level frequencies to Tower Air, Inc.; (2) tentatively withdraw the allocation of four additional weekly frequencies to Tower for U.S.-France services; and (3) tentatively allocate 21 additional weekly frequencies for U.S.-France services as follows: (a) seven frequencies to American for Los Angeles-Paris services; (b) seven frequencies to United for Chicago-Paris services; and (c) seven frequencies to US Airways for Philadelphia-Paris services. We have also decided to grant the frequency allocations *pendente lite* so as to make the frequency awards effective immediately on a temporary basis, pending a final decision in this case, in light of the imminent deadline for filing applications for the 1999 summer season slot allocations.

BACKGROUND

On June 18, 1998, the United States and France signed a new Air Transport Agreement (Agreement). The Agreement specified that U.S. carriers could operate 148 weekly base-level combination frequencies (corresponding to the level of service U.S. carriers were operating prior to the Agreement). The Agreement also provides for increases in air services over a five-year period. With respect to combination services, the Agreement provides that during the period April 1998 through April 2002, the airlines designated for combination services collectively may operate up to 63 additional weekly frequencies in the market. Of these 63 frequencies, a total of 21 frequencies became available beginning April 1998, 7 become available in April 1999, 14 in April 2000, 7 in April 2001, and 14 in April 2002.

With respect to 21 weekly frequencies that became available beginning April 1998, by Order 98-5-8, May 8, 1998, the Department allocated 11 of those frequencies, with seven to United and four to Tower. Ten frequencies remained available for allocation.

By Notice dated May 18, 1998, the Department solicited applications from carriers interested in using these ten frequencies as well as the seven weekly frequencies that would become available in April 1999.

With respect to the base-level frequencies, by Order 98-6-29, June 25, 1998, the Department made final the formal allocation of the 148 round-trip base-level frequencies held by U.S. carriers as follows:

American Airlines:	35 weekly frequencies
Continental Airlines:	21 weekly frequencies
Delta Air Lines:	28 weekly frequencies
Northwest Airlines:	7 weekly frequencies
Tower Air:	8 weekly frequencies
Trans World Airlines:	14 weekly frequencies
United Air Lines:	21 weekly frequencies
US Airways:	14 weekly frequencies

These allocations were made subject to the Department's standard dormancy conditions, under which if the frequencies are not used for 90 days, they automatically revert to the Department for reallocation.¹ The carriers were required to notify the Department whether the services they are currently authorized to operate are provided on a year-round or seasonal basis. American, Continental, Delta, Northwest, United, and US Airways all stated that they would use their allocations to operate services on a year-round basis. TWA stated that it would use 7 of its 14 allocated frequencies to operate year-round services in the New York-Paris market and that the other seven frequencies would be used to operate services in the St. Louis-Paris market on a seasonal basis during the summer season. Tower also stated that its 8 base-level frequencies were operated on a seasonal basis. Tower provided information by month on the number of frequencies it operated from June 1997 through June 1998 and the number of frequencies it planned to operate from July 1998 through December 1999.

A. PETITIONS FOR RECONSIDERATION OF ORDERS 98-6-29 and 98-5-8

American and US Airways filed petitions for reconsideration of Order 98-6-29.² They request that we reduce TWA's base-level allocation from 14 to 7 weekly frequencies and Tower's base-level allocation from 8 to 4 weekly frequencies. They argue that TWA should not be allowed to waste valuable and highly sought after U.S.-France frequencies by using 7 weekly frequencies in the St. Louis-Paris market only during the summer season. Similarly, they argue that information provided by Tower demonstrates that from September 1998 through March 1999, it will use fewer than 4 frequencies per week, or less than one-half of its base-level allocation, and that Tower's unused frequencies should be allocated to carriers that have submitted proposals for daily year-round services in the U.S.-France market.

Tower, TWA, and the St. Louis Parties submitted answers opposing the petitions. United also filed an answer and Tower filed a reply.

Tower argues that the petitions of American and US Airways are attempts to drive Tower out of the U.S.-France market as a competitor and that the Department should deny the petitions. Tower also argues that it should retain its frequency allocations (its base level and additional allocation) because (1) it performs an important competitive role in the U.S.-France market by providing the most seats in the New York-Paris market at the lowest cost to the consumer, even though it holds fewer frequencies than any other carrier serving the U.S.-France market; (2) the U.S.-France market is a significant and essential element of Tower's overall operations, and reducing its frequency allocations in the market would jeopardize Tower's ability to continue serving the market; (3) it has built its presence in the U.S.-France market over the past six years and its planned service in forthcoming years shows substantial increased use of its frequencies; and (4) the Governments of the United States and France knew during the negotiations on a new agreement that Tower has traditionally operated seasonal service to France and that it intended to continue doing so for the next several years. Finally, Tower argues that it requires the ability to use all twelve of its frequencies in order to operate all four of its flights to Paris that will operate beyond Paris to Tel Aviv, and to initiate new service from Miami and Los Angeles to Paris.

¹ For the 148 frequencies the dormancy period began June 25, 1998, the date the final order was issued.

² Both carriers filed motions for leave to file out of time, which we will grant.

TWA argues that Order 98-6-29 contemplated that some of the frequencies would be used for seasonal service, such as TWA plans to operate in the St. Louis-Paris market next year during the summer season. TWA states that it would not object to another carrier using its St. Louis-Paris frequencies during the winter season. TWA also argues that withdrawing its St. Louis-Paris frequency allocation would deprive St. Louis of its only nonstop service to Paris and would also deprive cities throughout the Mississippi Valley of online connecting service to Paris via St. Louis.

The St. Louis Parties request the Department to preserve TWA's St. Louis-Paris frequency allocation. They argue that St. Louis-Paris service is one of TWA's historic transatlantic operations and that it is St. Louis' only nonstop service to a vital market and also benefits travelers from the Midwest who rely on connections over St. Louis to Paris.

United states that the Department should either reconsider its decision in Order 98-6-29 to grant Tower eight base-level U.S.-France frequencies or reconsider its decision in Order 98-5-8 granting Tower four additional 1998 frequencies and place those four frequencies at issue in the *U.S.-France Combination Service Frequency Allocation Proceeding* because Tower does not intend to use any of the four additional frequencies it was allocated by Order 98-5-8 for New York-Paris service until July 1999. After July, United states that Tower will use fewer than three of the four frequencies but only for only two months, after which Tower will revert to using fewer than six of its total allocation of 12 frequencies for the remainder of 1999.

Decision on TWA and Tower Existing Frequency Allocations

We have decided to grant the petitions of American and US Airways for reconsideration of Order 98-6-29 and, on review, we affirm the allocation of 14 weekly base-level frequencies to Trans World and 8 weekly base-level frequencies to Tower, both for U.S.-France services that the carriers have provided for a number of years. However, we will withdraw the additional frequency allocation awarded Tower by Order 98-5-8.

Tower and TWA have been serving the U.S.-France market for years. Both carriers have operated seasonal service in the market, that is, providing New York-Paris and St.-Louis-Paris flights, respectively, during the summer months only. These considerations continue to support their base-level allocations because it was our intention in making those allocations to enable incumbent carriers to maintain their historic patterns of service in the U.S.-France market. Our intention was made clear in our tentative decision on this subject (Order 98-5-29) and made final without objection in Order 98-6-29. No arguments have been advanced at this late stage of the proceeding that persuade us to alter our conclusions on this issue.³

These same considerations do not apply to Tower's additional allocation of four weekly frequencies.

³ We note that TWA has indicated that it would have no objection to temporary reallocation of seven of its frequencies during the winter season when they would not be used by TWA. To the extent that any carrier is interested in using the frequencies on a seasonal basis, it is free to file such an application with the Department for consideration.

Allocation of four additional frequencies to Tower was made based on Tower's statements that it required those additional frequencies in order to increase its service in the New York-Paris market and, thus, it was our expectation that Tower had plans to use these additional frequencies on a consistent and year-round basis. The order stated that should Tower not use any of the frequencies, they will revert to the Department for reallocation.⁴

The information Tower submitted in response to Order 98-6-29 shows that Tower does not plan to use its additional frequencies for 15 of the 17 months in question. In these circumstances, we tentatively find that it is in the public interest to withdraw the allocation of additional frequencies to Tower and make those frequencies available for allocation to carriers that would make more effective use of them. In this regard, it is significant that other airlines would use all of the additional frequencies in question.

B. ALLOCATION OF AVAILABLE FREQUENCIES

Applications

American, Delta, United, and US Airways submitted applications, proposing to use the available U.S.-France frequencies in summer 1999. We will consolidate the applications of these four carriers into a new docket.

American requests 14 weekly frequencies: 7 for daily service in the Los Angeles-Paris market and 7 for daily service in the New York (JFK)-Paris market. American would begin both services on April 1, 1999, using 207-seat B767-300ER aircraft. American states that the Los Angeles-Paris market has been without U.S.-flag carrier nonstop service since United suspended its nonstop service in 1996 and that it believes that restoration of nonstop service in this market should rank among the Department's high priorities in allocating new U.S.-France frequencies. American also states that it has served the New York-Paris route since 1987 and requires an additional daily frequency to meet increasing demand in the local market and in on-line connecting markets that are conveniently served via New York (JFK).

Delta requests 14 weekly frequencies: 7 to operate a second daily nonstop flight in the Atlanta-Paris market and 7 to institute daily service in the New York (JFK)-Lyon market. Delta would begin both services in April 1999, using 212-seat B767-300ER aircraft. Delta states that the Atlanta-Paris market is the largest Atlanta-Europe market that receives fewer than two daily nonstop flights by Delta and that authorizing it to provide a second daily Atlanta-Paris flight would enable Delta to bring its services in line with demand in the market and with the service levels it provides to other large European destinations. Delta also states that Lyon is a significant center of tourism and commerce, including commerce with the United States. No airline currently provides nonstop service between the United States and Lyon, even though Lyon is one of the fastest growing U.S.-France markets, experiencing average annual growth rates in excess of 42 percent since 1993.

⁴ Order 98-5-8 at 4.

United requests 7 weekly frequencies to operate a second daily nonstop flight in the Chicago-Paris market beginning April 6, 1999, using 208-seat B767-300 aircraft. United states Chicago offers a strong local market that could provide established support for a second nonstop flight. Because the new service would operate in the late evening, business travelers would receive the benefit of completing a workday in Chicago prior to their departure for Paris.

US Airways requests 7 weekly frequencies to restore a second daily flight in the Philadelphia-Paris market beginning March 1, 1999, using 203-seat B767-200ER aircraft. US Airways states that the timing of the new Agreement made it necessary for US Airways to deploy temporarily the aircraft now used for a second daily Philadelphia-Paris flight during summer 1998 to launch daily service in the Pittsburgh-Paris market on October 1, 1998, and that restoring twice daily service in the Philadelphia-Paris market is an integral part of US Airways' strategic plan for development of international operations at Philadelphia. US Airways further states that strong consumer demand for twice daily service is driven by US Airways' extensive behind gateway network (97 cities are served nonstop to Philadelphia with over 392 daily flights) and the substantial local origin and destinations traffic in the Philadelphia and Tri-State region.

Responsive Pleadings

American, Delta, United, US Airways, and the City of Philadelphia filed answers and replies.

American argues that its Los Angeles-Paris proposal should be selected because it is the only proposal to open a new U.S. gateway to Paris. American argues that, in contrast, the other three U.S.-Paris gateways proposed by competing applicants--Atlanta (by Delta), Chicago (by United), and Philadelphia (by US Airways)--have nonstop service by those carriers, which are seeking to add frequencies, and not offer a new gateway service. American also argues that Delta's application for 14 frequencies should have the lowest priority in this proceeding because Delta has broad code-sharing rights with Air France, which, under the new Agreement, has a substantial number of unused frequencies that could be used to add additional U.S.-France services on which Delta's designator code could be displayed. Finally, American argues that its proposal to add flights in the New York-Paris market, the largest U.S.-France market, offers greater overall competitive benefits than the proposals of United and US Airways.

Delta states that Atlanta-Paris is its highest priority for award of frequencies and argues that a second flight in this market is important for Delta to be able to match capacity with demand and to offer local passengers, as well as on-line connecting passengers, a choice of travel times throughout the day. Delta also argues that Atlanta is the only large hub gateway to Paris located in the Southeast region, which has far less service than the other regions of the U.S. which the other applicants propose to serve. In this regard, Delta argues that (1) Chicago currently has two daily flights to Paris and Atlanta should get a second daily flight before Chicago gets a third; (2) New York(JFK)-Paris currently has four daily nonstop flights and Atlanta should get its second daily flight before JFK gets its fifth; (3) substantially more passengers in cities across the country would enjoy improved on-line service to Paris via Delta's second Atlanta-Paris flight than would benefit from either American's Los Angeles-Paris flight or US Airways' second Philadelphia-Paris flight. Finally, Delta argues that its New York-Lyon proposal is the only proposal in this proceeding that would offer first nonstop service in a U.S.-France city pair.

United argues that it is the only major U.S. transatlantic carrier that has been barred from serving the New York-Paris market and that United must be allowed to expand its services at its Chicago hub if it is to remain an effective competitor in the U.S.-France market. With respect to the other applications, United argues that (1) with the recent expansion of Atlanta-Paris service by Delta's alliance partner, Air France, that city pair should have lower priority than the larger Chicago-Paris market where no service has been added since 1990; (2) American's proposed Los Angeles-Paris service would benefit fewer passengers than United's Chicago-Paris service; (3) American's proposed New York-Paris service should be afforded lower priority than United's Chicago-Paris service because New York currently has multiple services offered by five U.S. carriers and two foreign carriers; and (4) US Airways' Philadelphia proposal, a gateway at which US Airways discontinued a second daily flight to Paris in favor of starting Pittsburgh-Paris service, should not be given seven frequencies ahead of United's Chicago proposal. Finally, United argues that the Department should institute a carrier selection proceeding and put at issue any frequencies that Tower has been allocated but is not using.

US Airways argues that Delta's alliance with Air France, which recently started its own Paris-Atlanta flights that also carry Delta's designator code, reduces the priority of awarding any additional frequencies to Delta. US Airways also argues that both Chicago and New York currently have more service to Paris than does Philadelphia and neither United's Chicago proposal nor American's New York proposal should be selected ahead of US Airways' restoration of a second daily Philadelphia-Paris flight. In addition, US Airways argues that American's Los Angeles proposal should not be selected ahead of US Airways' Philadelphia proposal because Los Angeles is not a hub for American, nor does American have a substantial number of flights there. In contrast, Philadelphia is US Airways' premier international hub.

The City of Philadelphia supports US Airways' application. Philadelphia argues that US Airways' application should be viewed as permitting the carrier to restore a second daily flight in the Philadelphia-Paris market while at the same time introducing new service in the Pittsburgh-Paris market. In this light, the City of Philadelphia argues that US Airways would be the only applicant that would serve Paris from a new U.S. gateway.

Tentative Decision on Frequency Allocations

We have tentatively decided to allocate 21 U.S.-France frequencies for services beginning in Spring 1999. This frequency pool consists of 17 available frequencies plus the four frequencies that we have provisionally determined should be withdrawn from Tower.

We believe that all of these frequencies should be used to authorize new services to Paris. Although we appreciate Delta's interest in serving Lyon, the record shows that Paris is the preferred destination for the vast majority of U.S. travelers. That being the case, we believe that it is in the public interest here to use the available frequencies to respond to the pent-up demand for additional service to Paris.

The record also shows that the restrictions on airline operations in the U.S.-France market that preceded our new agreement with France prevented airlines from tailoring services to new patterns of demand. This situation helped produce some anomalies in the market, including the lack of nonstop service at key U.S. cities and a geographic imbalance of services overall.

Our new agreement with France seeks to resolve these problems in the long run by removing all restrictions on airline services in the U.S.-France market. We believe that there is a strong public interest in using the frequencies now available to address some of the most significant service deficiencies now.

Against this background, we have tentatively decided to award the 21 additional weekly frequencies available for U.S.-France services as follows: (a) seven frequencies to American for Los Angeles-Paris services; (b) seven frequencies to United for Chicago-Paris services; and (c) seven frequencies to US Airways for Philadelphia-Paris services. These frequency allocations would be subject to our standard 90-day dormancy condition.⁵

The U.S.-France agreement provides valuable new opportunities to expand U.S.-carrier services in the U.S.-France market. With a total of 21 frequencies available for use in Spring 1999, we tentatively find that (1) the most public benefits would be provided by allocating the flights to three different carriers to institute additional daily services in the U.S.-France market and (2) that the proposals of American for daily service in the Los Angeles-Paris market, United for a second daily flight in the Chicago-Paris market, and US Airways for a second daily flight in the Philadelphia-Paris market best achieve this objective. This approach provides significant service and competitive benefits by authorizing service to France from a new point, from airline hubs, and from different sections of the country.

American's service at Los Angeles would restore U.S. carrier non-stop service from that city to Paris. It would offer significant competition to the foreign airlines now serving that market. It would also represent service at only the second gateway on the West Coast. United's service at Chicago and US Airways' service from Philadelphia would also significantly improve service in their respective local markets and between many interior points in the United States and France. This is particularly true because both carriers would operate from major gateways that also serve as their hubs. Moreover, the combination of American's service at Los Angeles, United's at Chicago, and US Airways at Philadelphia best meets the public interest in meeting demand that cannot be met by other U.S.-flag service, and will ensure that passengers in the regions served by these three major gateways will be able to enjoy the benefits of our new liberal aviation agreement with France. We believe that this consideration is entitled to considerable weight in the context of this proceeding because most of the service between the U.S. and France now operates from New York.

We believe that the public benefits resulting from this approach outweigh those resulting from additional service either by American (New York-Paris) or Delta (Atlanta-Paris).

The New York-Paris market now receives significantly more service than any other U.S.-France market. Five U.S. carriers offer more than 400 weekly flights in that market and additional services are also provided by foreign-flag carriers. This consideration, coupled with the limited

⁵ Consistent with our standard practice, the 90-day dormancy period would begin on the date each carrier receiving an allocation proposes to inaugurate service.

number of frequencies available at this time, persuades us that the public would be better served by our using this proceeding to authorize service from other gateways.

We have reached similar tentative conclusions with respect to Atlanta-Paris services. That market is now served by both Delta and Air France, individually and as part of their aviation partnership. Delta operates Atlanta-Paris nonstop flights, Air France operates Atlanta-Paris flights, and both carriers operate code-share services on the other's services. Both Delta and Air France are in the position to continue to meet the needs of this market because of their partnership and because the agreement provides Air France with the frequencies to increase its service in that market. We also tentatively do not find that Delta's New York-Lyon proposal should be selected in circumstances where the number of new frequencies available at this time for allocation is limited and the demand for additional service to Paris, historically the most important market in France, appears to exceed the frequencies available for such additional services.

US Airways proposes to begin its second daily flight in the Philadelphia-Paris market beginning March 1, 1999. There were 10 weekly frequencies available for service beginning April 1998 that were unallocated and that we are now tentatively allocating in this proceeding. In order to enable US Airways to begin its service as planned, the allocation of seven weekly frequencies to US Airways would be from the pool of 1998 that remain available.

Pendente Lite Awards

The additional U.S.-France frequencies constitute valuable economic rights and it is clearly in the public interest to ensure that these rights can be exercised. The deadline for filing applications for slots at Paris airports for the 1999 summer season is October 21. In light of this imminent deadline, and the fact that we cannot complete this proceeding before that date, we have decided that in this case, it is in the public interest to make the awards effective immediately on a *pendente lite* basis, thereby facilitating the ability of the carriers we have proposed to select here to secure the slots necessary for their services, while preserving our ability to change our tentative decision if we receive comments on this order that justify such a change.

The authority granted here is only temporary, and will not affect the final outcome of this proceeding. Furthermore, no party is prejudiced by awarding the frequency allocations *pendente lite*. Like *pendente lite* awards in other proceedings, each carrier's authority will remain effective until the issuance of a final order in this proceeding.

Because of our desire to complete this case quickly, we will serve this order on the parties by facsimile and we will authorize parties to serve their objections or comments to the tentative decision facsimile and/or electronic mail.

ACCORDINGLY,

1. We grant the petitions of American Airlines, Inc., and US Airways, Inc., in Docket OST-98-3872 for reconsideration of Order 98-6-29 and, on review, we affirm the base-level allocation of 14 weekly U.S.-France frequencies to Trans World Airlines, Inc., and 8 weekly base-level U.S.-France frequencies to Tower Air, Inc.;

2. We tentatively withdraw the allocation of four additional U.S.-France frequencies to Tower Air, Inc., made in Order 98-5-8, Docket OST-98-3757;
3. We consolidate into the *1999 U.S.-France Combination Service Frequency Allocation Proceeding*, Docket OST- 98-4614 the applications of American Airlines, Inc., in Docket OST-98-3756; Delta Air Lines, Inc., in Docket OST-98-3932; United Air Lines, Inc., in Docket OST-98-3933; and US Airways, Inc., in Docket OST-98-3931;
4. We tentatively allocate 21 additional weekly frequencies for U.S.-France services beginning Spring 1999 as follows: (a) seven frequencies to American Airlines, Inc., for Los Angeles-Paris services; (b) seven frequencies to United Air Lines, Inc., for Chicago-Paris services; and (c) seven frequencies to US Airways, Inc., for Philadelphia-Paris services;
5. The frequencies tentatively awarded in ordering paragraph 4, above, are effective immediately and will remain in effect until a final decision in the *1999 U.S.-France Combination Service Frequency Allocation Proceeding*, Docket OST-98-4614 issues;
6. We direct all interested parties having objections to our tentative decisions set forth in this ordering and in ordering paragraphs 2 through 4, above, to file their objections with the Department's Docket Section (Dockets OST-98- 4614 and OST-98-3757), U.S. Department of Transportation, 400 Seventh Street, N.W., Room PL-401, Washington, D.C. 20590 no later than seven calendar of the date of service of this order, answers thereto shall be filed no later than 5 calendar days thereafter;⁶
7. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;⁷
8. If no objections are filed, we will deem all further procedural steps to have been waived, and proceed to enter a final order;
9. We grant the motions of American Airlines, Inc., and US Airways, Inc., for leave to file out of time in Docket OST-98-3872; and
10. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Tower Air, Inc.; United Air Lines, Inc.; US Airways, Inc.; the City of Philadelphia, Division of Aviation; the St.

⁶ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system.

⁷ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order. Service of submissions may be made by facsimile and/or electronic mail.

Louis Parties; the Ambassador of France in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

PATRICK V. MURPHY

Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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